

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DORESE SCOTT)	
Charging Party,)	
v.)	
STATE OF DELAWARE, DEPT. OF)	
TRANSPORTATION, DELAWARE)	<u>ULP Nos. 05-02-467/469 Consolidated</u>
TRANSIT CORP.,)	Decision on Respondents' Motion To
Respondent,)	Dismiss
and)	
JACKIE HERBERT, PRESIDENT,)	
ATU, LOCAL 842,)	
Respondent.)	

BACKGROUND

Respondent, State of Delaware, Department of Transportation, Delaware Transit Corporation (“State” or “DTC”) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1986).

At all times relevant to this matter, the Amalgamated Transit Union, Local 842, (“ATU”) was the exclusive bargaining representative of the Fixed Route Drivers employed by DTC within the meaning of §1302(j) of the PERA. DTC and ATU are parties to a collective bargaining agreement for the period December 1, 2002 through November 30, 2007.

Respondent Jackie Herbert (“Herbert”) was President of the ATU and in that capacity was a designated representative of an employee organization within the meaning of §1302(i) of the PERA.

Charging Party Dorese Scott (“Scott” or “Charging Party”) was a public employee within the meaning of 19 Del.C. §1302(o) of the PERA who was employed by DTC as a Fixed Route Driver at the time her employment was terminated on or about August 20, 2004.

On February 11, 2005, Charging Party filed an unfair labor practice charge with the Public Employment Relations Board (“PERB”) against DTC. The Charge alleges conduct by DTC in violation of 19 Del.C. §1303, Employee Rights, paragraphs (2), (3) and (4) and 19 Del.C. §1307, Unfair labor practices, (a) (1), (2), (3), (5), (7) and (8).

Charging Party alleges that on August 20, 2004, she was summoned to a meeting where she was accused by management of being responsible for \$15,000 in missing cash and all day passes. Both management and Union representatives were present at the meeting. Charging Party maintains she was given the choice by management of either being terminated and possibly criminally prosecuted, or resigning. After initially accepting the opportunity to resign she subsequently requested, through Local Union President Jackie Herbert, to rescind her resignation.

As a result, Herbert requested a second meeting with management. Both DTC and ATU officials attended the second meeting on September 9, 2004. Charging Party alleges that during the meeting she was denied access to the contractual grievance procedure. She acknowledges that at the conclusion of the meeting she again elected to resign rather than pursue the matter through the contractual grievance procedure. She claims an inducement for her decision to resign was the possibility that she might be rehired in a position that did not involve handling money.

Charging Party accuses DTC and the ATU of collaborating against her. She contends that if the unfair labor practices she alleges had not been committed she would not have been terminated.

On April 5, 2004, the PERB issued a Probable Cause Determination finding probable cause to believe that a violation of 19 Del.C. §1303 (4) and/or §1307(a)(1), (a)(2) and/or (a)(3) may have occurred.

1303. Public employee Rights

Public employees shall have the right to:

- (4) Be represented by their exclusive representative, if any, without discrimination.

1307. Unfair Labor Practices

(a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

- (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
- (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
- (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.

On February 23, 2005, Charging Party filed a separate Charge against ATU, Local 842 President, Jackie Herbert. The alleged facts supporting the Charge against Herbert are essentially the same as those set forth in the Complaint filed by Charging Party against the State in ULP No. 05-02-467.

The Charge against Herbert alleges violations of 19 Del.C. §1303, Employee rights, paragraphs (2), (3) and (4), and 19 Del.C. §1307 Unfair labor practices, (b)(1), (2), (3) and (4).

Charging Party accuses the ATU of collaborating with DTC against her. She contends that if the unfair labor practices she alleges had not been committed she would not have been terminated.

On April 20, 2005, the PERB issued a Probable Cause Determination finding probable cause to believe that a violation of 19 Del.C. §1303(2) and/or (4) and/or 19 Del.C. §1307(b)(1) or (b)(3), may have occurred.

1303. Public Employee Rights

Public employees shall have the right to:

- (2) Negotiate collectively or grieve through representatives of their own choosing.
- (4) Be represented by their exclusive representative, if any, without discrimination

1307. Unfair Labor Practices

(b) It is an unfair labor practice for a public employee or for an employee organization or its designated representative to do any of the following:

- (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
- (3) Refuse or fail to comply with any provision of this chapter or with rules and regulation established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

The hearing officer also determined that considering the virtually identical fact allegations and the alleged statutory violations involved with Charging Party's complaints against DTC and Herbert, in the interest of efficiency Scott v. DTC (ULP No. 5-02-467) and Scott v. Herbert (ULP No. 05-02-469) should be consolidated and heard together.

A hearing on the underlying substantive issues was held on November 9, 2005. At the hearing, Local 842 Shop Steward Richard Flowers assisted Charging Party in presenting her case. DTC was represented by Catherine Hickey, Esquire, and Herbert by Joseph Pass, Esquire.

At the conclusion of Charging Party's case, counsel for the State and counsel for Herbert moved to have the Charges dismissed for failure by Charging Party to substantiate either Charge by the required preponderance of the evidence. With the agreement of the parties it was decided that the hearing officer would issue a ruling on the motions by the State and Herbert after reviewing the hearing transcript. The following is the hearing officer's decision and supporting discussion.

DISCUSSION

The un rebutted testimony establishes the following: During the pre-termination meeting on August 20, 2004, Charging Party was presented with the charges against her and provided the opportunity to explain why she should not be terminated. At the meeting, Charging Party was represented by both the Local Union President, Jackie Herbert, and Recording Secretary, Addie Richardson. After meeting with management, Charging Party discussed her circumstances privately with Herbert and Richardson. After

reading the resignation statement prepared by Herbert, Charging Party voluntarily signed the following statement:

I Dorese Scott, agree with the charges as stated and do offer my resignation and acknowledge that the only penalty or restitution will be money due me for vacation, sick days, personal days.

Dorese Scott/sig. 8/20/04 (State Ex. 1)

After subsequently changing her mind Charging Party requested through Local Union President Herbert to rescind her resignation. A grievance was instituted by President Herbert and a meeting was held on September 9, 2004. At this meeting, Scott met with management and again met privately with Union President Herbert and Recording Secretary Richardson who were present and represented Charging Party at the September meeting. Following their discussion, Charging Party elected not to pursue the grievance and to let her resignation stand. At no time thereafter did Charging Party contact DTC to revive her grievance or attempt to pursue the matter with or without the intervention of the Union.

Charging Party's claim that she was treated differently than other similarly situated employees (specifically George Corbin, Sheila El, Marshall Wright and Eleanor Fontana) is unsubstantiated. Charging Party offered only rumor and conversations with other employees as the basis for her claim. No supporting documentation was provided and the employees she identified were not subpoenaed to testify nor did they appear to testify. Union President Herbert was unaware of any incidents involving these other four employees and no grievances were filed by them or by the Union on their behalf.

Charging Party's claim that employee Edward Johnson had the opportunity to proceed to arbitration despite having resigned is also misplaced. The record establishes that employee Johnson, unlike Charging Party, rescinded his resignation and chose to proceed through the grievance procedure. His arbitration occurred at the direction of the International Union rather than the Local Union.

The grievant's allegation that she was wrongfully deprived of arbitration because of something that happened to an employee named Angie White was unsubstantiated. When asked, "What happened to Ms. White?" Charging Party replied, "I don't know." (Transcript, page 52)

Charging Party's alleged understanding at the September 9, 2004, meeting that she might be offered another job is irrelevant. She acknowledged resigning and testified she understood there was no obligation on the part of DTC to offer her other employment.

Nor is there any evidence of record of collusion between DTC and the Local Union. On August 20, 2004, Union President Herbert did not know why he was summoned to a meeting with Charging Party and management. President Herbert, Recording Secretary Richardson and Charging Party together learned of the charges for the first time at that meeting. The record further establishes that DTC explained the basis of those charges in some detail. The following excerpt is from the unrefuted testimony of William Hickox, the senior management official present at the August 20, 2004, meeting, concerning the result of DTC's investigation: (Transcript, pages 129, 130 and 131)

Q. And what occurred during that meeting?

A. During that meeting, we advised Ms. Scott of the information that we had in regard to the activities she

had been engaging in. And we presented documentation supporting that.

Q. Did you show anybody that documentation?

A. Yes.

Q. And what kind of documentation was it?

A. It was reports that had been generated by Mr. Shertz in regard to the fare box activities of Ms. Scott as compared to all the other employees at DART.

Q. And, essentially, what was the underlying concern with Ms. Scott's performance?

A. That she had been generating daily passes at a significantly higher rate than other employees, and, in addition, that she received, according to her, the keys she pressed on the fare box, she was receiving more \$5 bills than anybody else on – in the—on that report as well.

Q. And those concerns were investigated?

A. Yes, in fact, the \$5 bills that she had been supposedly receiving turned out to be ripped up pieces of paper that were being pretended to be \$5 bills, and she would key in the – hit the key that indicated a \$5.00 bill has been received instead of a piece of paper. And, as such, we also were able to confirm that she had been generating daily passes unlawfully as well.

Q. And this was the information that you advised Ms. Scott and her union representatives –

A. Yes.

Q. - - about at this meeting?

A. Yes.

Q. And did you discuss with Ms. Scott, in the presence of her union representatives, courses of action that DTC was contemplating as a result of that information?

A. Yes. Based on the information we had, the amount of funds

that were in question were fairly significant; however, we indicated that considering her length of service, that we would allow her to resign, if that was her desire, and then avoid going through the termination process and then possible prosecution.

The burden of proving by a preponderance of the evidence the violations that Charging Party alleges rests with the Charging Party. The evidence of record establishes only that after hearing the charges and the supporting reasons Charging Party, rather than face possible criminal prosecution, resigned on two separate occasions. No attempt was made by her after September 9, 2004, to rescind that resignation.

There is no credible evidence of record that Charging Party was wrongfully denied access to the contractual grievance procedure. To the contrary, she participated in a pre-termination meeting and a grievance meeting requested by Local Union President Herbert after Charging Party informed him of her desire to rescind her resignation. It was at this second meeting Charging Party elected to stand by her resignation.

DECISION

1. The evidence of record at the conclusion of the presentation of Charging Party's case fails to establish by a preponderance of the evidence conduct by DTC in violation of 19 Del.C. §1303, Employee Rights, paragraphs (2), (3) and (4), and 19 Del.C. §1307(a)(1), (2), (3), (5), (7) and (8), as alleged.

2. The evidence of record at the conclusion of the presentation of Charging Party's case fails to establish by a preponderance of the evidence conduct by the ATU in violation of 19 Del.C. 1303 (2), (3) and (4) and 19 Del.C. §1307(b) (1), (b)(2), (b)(3) and (b)(4), as alleged.

Accordingly, the Charges against both DTC and Herbert are dismissed.

January 6, 2006

(Date)

/s/Charles D. Long, Jr.

Charles D. Long, Jr.,
Executive Director